

### Remarks

Claims 11-17 stand rejected under 35 U.S.C. §112 for reasons set forth in Paragraphs 1-5 of the Office Action. It is respectfully submitted that the amendments to Claims 11, 14 and 15 obviate the §112 rejections.

Turning to the art rejections, Claims 11-17 stand rejected as obvious over *Lerg, et al* (U.S. Patent No. 6,132,738) in view of *Balzer* (U.S. Patent No. 5, 605,651) and *Bergmann, et al* (U.S. Patent No. 5, 077,040). The rejection is respectfully traversed. *Lerg, et al, vis-a-vis* applicant's claims, teaches a composition comprised of a trialkyl-and/or trialkanolamine salt of a fatty acid sulfate and fatty alcohol ether sulfate and an oil component, e.g., carboxylic acid esters of glycerol. More significantly, *Lerg, et al* teaches that the composition can contain, at the most, 3.5% by weight of water based on the total weight of the preparation. In describing the prior art, *Lerg, et al* also discloses that depending upon the type of constituents, it is possible to formulate preparations which produce spreading oily films, oil-in-water systems or also completely solubilized systems on the surface of the bath water. In the lines cited by the Examiner in *Lerg, et al*, these formulations are described as being "of a different type" and can only mean that *Lerg* is disclosing compositions different from those described in col. 1, ll 35-47. Indeed, this is true. The *Lerg* composition, as noted above, is limited to, at most, 3.5% by weight water, which is in direct contradistinction to applicant's claims that require 20% to 95% by weight water. More to the point, it would frustrate the teachings of the *Lerg, et al* reference, if one were to formulate the composition, such that it had more than 3.5% by weight water. The issue is not, as stated by the Examiner, that *Lerg, et al* does not teach a diluted form, i.e., with substantial amounts of water. Rather, the issue is that *Lerg, et al* expressly teaches that the composition cannot have much water, i.e., greater than 3.5% by weight.

The secondary references to *Balzer* and *Bergmann, et al* do not cure the infirmities of the

*Lerg, et al* reference. While the *Balzer* reference does, indeed, teach that alcohol sulfates can be used as emulsifiers, the reference does not specifically mention alkylsulfates or alkyl ethersulfates as co-emulsifiers containing C<sub>2</sub> – C<sub>3</sub> – alkanolammonium salts thereof. More particularly, alcohol sulfates and/or alcohol ether sulfates are only mentioned among a myriad of surfactants that can act as emulsifiers. However, there is no teaching in *Balzer* to use a combination of C<sub>2</sub> – C<sub>3</sub> – alkanolammonium salts in combination with alkylsulfates or alkyl ether sulfates. Furthermore, *Balzer* does not teach the presence of mono- or polyvalent- C<sub>2</sub> to C<sub>24</sub> alcohols. In short, the combination of *Balzer* and *Lerg, et al* do not make out a *prime facie* case of obviousness.

Nor does the combination of *Lerg, et al* in *Bergmann, et al* render applicant's claims unpatentable. The teaching of *Bergmann, et al* is essentially the same as *Balzer* with the exception that triethanolamine salts of lauryl sulfate and lauryl ether sulfate are specifically mentioned, albeit, in a shotgun disclosure of numerous other surfactants. Furthermore, those compounds are not disclosed as part of a microemulsion but rather part of a composition comprising a cleansing surfactant to which the microemulsion may be added. In this regard, see col. 18, ll 34-46 where it is stated: "The microemulsion compositions of the present invention can be formulated into a hair conditioning product, absent cleansing surfactants, or can be formulated into hair shampoo/conditioner composition, including anionic amphoteric or nonionic surfactants." In effect, in *Bergmann, et al* the triethanolamine salts of lauryl sulfate and lauryl ether sulfate are part of the cleansing composition and it is not taught that the cleansing composition further comprises an oil component such as component (C) set forth in applicant's Claim 11. It is respectfully submitted that the combination of *Lerg, et al* and *Bergmann, et al* do not render applicant's claims obvious.

Claims 11-17 also stand rejected as being unpatentable over *Hermann, et al* (U.S. Patent

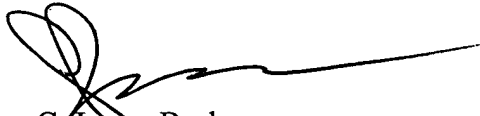
No. 4,371,584) in view of *Balzer and Bergmann, et al.* The arguments above with respect to the combination of *Lerg, et al* with *Balzer and Bergmann, et al* can essentially be restated with respect to this rejection. Specifically, *Hermann, et al* like *Lerg, et al* makes it clear that while the compositions can contain water, the amount must be severely limited, the water content not being present in excess of 15% by weight of the total composition lest phase separation occur (See col. 2, ll 48-52). It is respectfully submitted that applicant's claims are patentable over *Hermann, et al* in view of *Balzer and Bergmann, et al.*

It is beyond peradventure that the references to *Lerg, et al* and *Hermann, et al* clearly teach away from applicant's compositions in that they specifically and expressly point out that the amount of water must not exceed a small specified amount (3.5% in the case of *Lerg, et al*, 15% in the case of *Hermann, et al*). Thus, in order for the Examiner to combine the teachings of the secondary references with each of the primary references, the formulations of the latter must be completely reformulated in a manner that would render the compositions useless for their intended purpose. Furthermore, any attempted reformulation of the compositions of the primary references can only be accomplished by resort to applicant's disclosure, a forbidden foray into hindsight analysis.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims are in condition for allowance, which is hereby earnestly solicited and respectfully

requested.

Respectfully submitted,



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Date: December 23, 2003

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By

